

02D01-2003-CT-000158

Allen Superior Court 1

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Allen County, India  
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STATE OF INDIANA	)		IN THE ALLEN SUPERIOR COURT
	)	SS:	
COUNTY OF ALLEN	)		CAUSE NO. _____
ANTHONY W. LINCOLN,	)		
	)		
Plaintiff,	)		
	)		
v.	)		
	)		
CITY OF FORT WAYNE and	)		
DETECTIVE LARRY TAGUE,	)		
	)		
Defendants.	)		

**COMPLAINT**

COMES NOW Plaintiff, by counsel, and alleges against the Defendants as follows:

1. The Plaintiff is Anthony Wayne Lincoln, a resident of Fort Wayne, IN at all material times to this Complaint.
2. The Defendants include City of Fort Wayne Police Department personnel Detective Larry Tague, who are named in their individual capacity pursuant to 42 U.S.C. § 1983. At all material times to this Complaint the Defendants, and each of them were acting within the scope of employment and under color of law when they subjected the Plaintiff to excessive and unreasonable force, in violation of the Plaintiff's federally protected rights against unreasonable seizure under the Fourth Amendment to the United States Constitution and 42 U.S.C. § 1983. In the alternative, Defendants and each of them, failed to protect the Plaintiff from excessive and unreasonable force, and battery, theft and/or conversion, in spite of having a reasonable opportunity to do so.
3. In addition, Defendant Detective Tague, by information or belief, seized property from Mr. Lincoln without a warrant, permission, or other legal justification, and never

returned it, in violation of the Plaintiff's Fourth Amendment to be right from free from unreasonable seizure of property, and in violation of Indiana laws against theft and conversion.

4. Also named as a Defendant is the City of Fort Wayne, which is named in its representative capacity as the employer of Detective Tague. At all material times to this Complaint, the City of Fort Wayne employed the individually named Defendants, when they subjected the Plaintiff to state tort battery, in violation of the Plaintiff's rights under the laws and public policies of the state of Indiana. As the individually named Defendants' employer, the City is liable to the Plaintiff for their state torts, under the doctrine of *respondeat superior*.
5. The Plaintiff issued a Tort Claim Notice on August 27, 2018, a copy of which is attached hereto, incorporated herein, and made a part hereof as Exhibit "A". All administrative remedies have been exhausted, and all jurisdictional pre-requisites have been met for the filing of this lawsuit.
6. Around 3 a.m. on July 28, 2018 in the 1500 block of Production Road in Fort Wayne, Indiana, Mr. Lincoln approached the City of Fort Wayne Police Department vehicle in which Respondent Tague was stationed next to another city police vehicle, to ask whether Tague was available to provide him the service of a ride back home.
7. Mr. Lincoln made the request, because he had ridden his bicycle to a local establishment on Production Road earlier in the evening. However, Mr. Lincoln was now concerned that riding his bicycle the more than three miles to his home in the darkness on busy public roads would be dangerous to his safety.

8. When Mr. Lincoln raised his hands when he approached Defendant Tague, and had them raised when he made the request for a ride. With his hands still raised, he also notified Tague that he had a toy airsoft gun on his person, to alert the detective and to hopefully alarming him or having any potential confusion or misperceptions occur.
9. Tague asked Mr. Lincoln where the toy was. Mr. Lincoln, with his hands in the air, notified the detective that the toy was in his waistband.
10. Defendant Tague asked Mr. Lincoln to point to where the toy was. Mr. Lincoln, with his hands raised, pointed to his waistband. Tague then instructed Mr. Lincoln to show him the toy.
11. Following Tague's orders and with one arm still raised, Mr. Lincoln carefully raised his shirt to show where the toy was located. He did not remove the toy from the waistband. At no point did Mr. Lincoln make any threatening motions, or threatening statements, and he remained cooperative with Tague's requests and orders.
12. In spite of Mr. Lincoln remaining compliant and non-threatening, Defendant Tague then used his own firearm to, Mr. Lincoln, in the chest.
13. Following the wrongful shooting of Mr. Lincoln, he was rushed to the hospital in critical condition, where during the following days he required extensive surgery to survive. Mr. Lincoln now suffers from permanent physical and mental trauma as a result of the attempted killing.
14. Sometime after the shooting but before the Plaintiff was released from the hospital, Defendant Tague and/or other City of Fort Wayne officers acting on behalf of Tague, confiscated Mr. Lincoln's mobile telephone and wallet, and they have since refused to

return them to him. The seizure of Mr. Tague's property was without a warrant, or the Plaintiff's permission.

15. The Plaintiff Mr. Lincoln contends that Defendant Tague subjected him to excessive and unreasonable force, and battery when he shot Mr. Lincoln, which was in violation of Mr. Lincoln's right to be free from unreasonable seizure under the Fourth Amendment under the United States Constitution, § 1983, and the laws and public policies of the state of Indiana.
16. The seizure of Mr. Lincoln's wallet and cell phone was an unreasonable seizure of his property, as well as theft/conversion, and was in violation of the Plaintiff's rights under the Fourth Amendment to the United States Constitution and the laws and public policies of the state of Indiana.
17. The City of Fort Wayne, as the employer of Defendant Detective Tague and of the Fort Wayne Police Department personnel that seized Mr. Lincoln's wallet and cell phone, are liable to Mr. Lincoln for its employees' state tort battery, and theft/conversion to which they subjected Mr. Lincoln.
18. The wrongful and unlawful conduct of the Defendants was the direct and proximate cause of the Plaintiff Mr. Lincoln suffering severe physical injury, pain, mental anguish, inconvenience, expense, and other damages and injuries.
19. The wrongful and unlawful conduct was also intentional, knowing, willful, wanton, and in reckless disregard of Mr. Lincoln's rights under the Fourth Amendment to the Constitution, § 1983, and the laws and public policies of the state of Indiana. Imposition of punitive and liquidated damages is appropriate, where available.

WHEREFORE, the Plaintiff Anthony Wayne Lincoln respectfully requests judgment against the Defendants, and each of them, for compensatory damages, punitive damages (where available), liquidated damages (where available), and reasonable attorney fees and costs, as well as all other just and proper relief in the premises.

**JURY DEMAND**

Pursuant to Rule 38 of the Indiana Rules of Trial Procedure, Plaintiff demands a trial by jury in this action.

Respectfully submitted,

**CHRISTOPHER C. MYERS & ASSOCIATES**

/s/Christopher C. Myers  
Christopher C. Myers, #10043-02  
809 South Calhoun Street, Suite 400  
Fort Wayne, IN 46802  
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Facsimile: (260) 424-0712  
E-mail: cmyers@myers-law.com  
Counsel for Plaintiff

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Clk

Allen County, Indiana

**CHRISTOPHER C. MYERS & ASSOCIATES**

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August 27, 2018

Tom Henry, Mayor  
City of Fort Wayne  
200 East Berry Street, 4th Floor  
Fort Wayne, IN 46802

Carol Helton, City Attorney  
City of Fort Wayne  
200 East Berry Street, Suite 425  
Fort Wayne, IN 46802

*Re: Anthony Wayne Lincoln v. Detective Larry Tague, Jr. and City of Fort Wayne*

**NOTICE OF TORT CLAIM**

Dear Ladies and Gentlemen:

Christopher C. Myers & Associates represents Claimant, Mr. Anthony Wayne Lincoln, in an action against Respondents, City of Fort Wayne Detective Larry Tague, Jr., the City of Fort Wayne, and Jane and John Does.

This letter serves as Mr. Lincoln's Notice of Tort Claim to you.

**CIRCUMSTANCES WHICH BROUGHT ABOUT LOSS**

**INTRODUCTION**

Mr. Lincoln brings this action for violations of the Fourth Amendment to the United States Constitution pursuant to 42 U.S.C. § 1983 and for the torts of assault and battery committed by Respondent Tague when he attempted to kill Mr. Lincoln for doing nothing other than following the officer's orders on July 28, 2018 in Fort Wayne, Indiana.

**PARTIES**

Claimant is Anthony Wayne Lincoln. Mr. Lincoln is a U.S. citizen and resident

Ex. A

of Allen County, Indiana.

Respondent is City of Fort Wayne Detective Larry Tague, Jr. Respondent Tague is named in his individual capacity for all claims. Respondent Tague at all times alleged acted under color of law and within the scope of his employment with the City of Fort Wayne.

Respondents are Jane and John Does. Respondent Does are named in their individual capacities for all claims. Respondent Does at all times alleged acted under color of law and within the scope of their employment with the City of Fort Wayne.

Respondent is City of Fort Wayne. Respondent City is named in its representative capacity for Mr. Lincoln's tort claims as employer of individual Respondents. Respondent City is also named in its official capacity for its failure to train its officers to respond lawfully to the presence of toy airsoft guns.

### FACTS

Around 3 a.m. on July 28, 2018 in the 1500 block of Production Road in Fort Wayne, Indiana, Mr. Lincoln approached the City of Fort Wayne Police Department vehicle in which Respondent Tague was stationed, next to another city police vehicle, to ask whether Respondent Tague was available to provide him the service of driving him to his home.

Mr. Lincoln had ridden his bicycle to an establishment at that location earlier that night. However, Mr. Lincoln was concerned that riding his bicycle more than three miles to his home in the darkness on busy public roads would be dangerous to his safety.

Mr. Lincoln had his hands raised when making his request to Respondent Tague.

Mr. Lincoln, with his hands raised, further notified Respondent Tague, so no potential confusion or misperception would arise, that he had a toy airsoft gun on his person.

Respondent Tague asked Mr. Lincoln where the toy was. Mr. Lincoln, with his hands raised, notified Respondent Tague that the toy was in his waistband.

Respondent Tague asked Mr. Lincoln to point to where the toy was. Mr. Lincoln, with his hands raised, pointed to his waistband.

Respondent Tague then told Mr. Lincoln to show him the toy. Mr. Lincoln, following Respondent Tague's orders and with one arm still raised, raised his shirt to show Respondent Tague where the toy was located, just as he had been ordered.

Mr. Lincoln did not remove the toy from his waistband. Mr. Lincoln did not make any threatening motions. Mr. Lincoln did not make any threatening statements.

Nevertheless, Respondent Tague then and without warning shot Mr. Lincoln with a firearm directly in the chest.

The other city officer on scene did nothing whatsoever to stop Respondent Tague from attempting to kill Mr. Lincoln.

After Respondent Tague shot Mr. Lincoln in the chest in an attempt to kill him, Mr. Lincoln was rushed to the hospital in critical condition. Mr. Lincoln in the following days required extensive surgery in order to survive.

Mr. Lincoln suffers from permanent physical and mental trauma as a result of the attempted killing.

Sometime after Mr. Lincoln was shot but before he was released from the hospital, City of Fort Wayne officers confiscated Mr. Lincoln's mobile telephone and wallet. The City of Fort Wayne has refused to return Mr. Lincoln's mobile telephone and wallet. Mr. Lincoln, therefore, also intends to bring a takings claim.

#### **EXTENT OF LOSS**

Mr. Lincoln suffered physical injury, physical pain, financial and medical costs, conversion and seizure of property, emotional distress and mental anguish, legal and counsel costs and fees, and other damages and injury.

#### **TIME AND PLACE LOSS OCCURRED**

These violations of the rights of Mr. Lincoln took place on July 28, 2018 on the 1500 block of Production Road in Fort Wayne, Indiana. See City of Fort Wayne log no. 18f088744.

#### **NAMES OF ALL PERSONS KNOWN INVOLVED**

Claimant: Mr. Anthony Wayne Lincoln

Respondents: Detective Larry Tague Jr., Officer John Doe

Witnesses: Detective Liza Anglin, Jane and John Does

#### **AMOUNT OF DAMAGES SOUGHT**

Mr. Lincoln understands there is a cap for relief available to individuals for state tort claims under the Indiana Tort Claims Act. He seeks whatever amount a judge and jury may find reasonable. He may also seek additional compensation to which he is entitled under federal civil rights law, including compensatory damages, punitive damages, and attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b).

#### **RESIDENCE AT TIME OF LOSS AND AT TIME OF FILING NOTICE**

Mr. Lincoln's address at the time of loss and at the time of filing this notice:

6726 Ludwig Circle, Fort Wayne IN 46825

**CONCLUSION**

Please do not hesitate to contact me directly should you have any questions or should you wish to discuss any aspect of Mr. Lincoln's claims. Again, as I stated in my August 17, 2018 letter, it is requested you return Mr. Lincoln's mobile telephone and wallet to him immediately. These items may be deliver to my office for return.

Thank you.

Respectfully,

**CHRISTOPHER C. MYERS & ASSOCIATES**



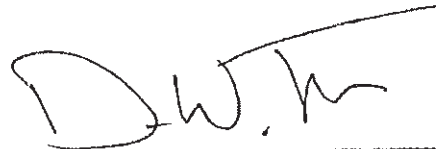
David W. Frank

**CERTIFICATE OF SERVICE**

The undersigned hereby swears and affirms that a true and correct copy of the above Tort Claim Notice was deposited in the United States Mail, postage prepaid, on the 27<sup>th</sup> day of August, 2018 and sent to the following:

Tom Henry, Mayor  
City of Fort Wayne  
200 East Berry Street, 4th Floor  
Fort Wayne, IN 46802

Carol Helton, City Attorney  
City of Fort Wayne  
200 East Berry Street, Suite 425  
Fort Wayne, IN 46802



David W. Frank

DF: